it has always been. Yet this exception is fully established. In neither case is the statute itself altered by the court, which simply protects innocent persons from misfortunes chargeable to its own error. As to them, the statute remains in abeyance, dormant, and without power to harm.

If this exception should finally obtain full recognition as an established part of the law, it would minimize the evil results which always attend a change of judicial decision. That injustice is done to the individual in whose case the reversal takes place is obvious, but this injustice is necessary to prevent the courts from being bound by some erroneous, and perhaps ill-considered decision. But to confine the evil to a single case would seem to conform most strongly to the liberal and kindly spirit which has always characterized the conduct of the Anglo-American law toward an accused person.

PRESUMPTIONS AS TO FOREIGN LAWS.—It is a general rule in the United States that the courts of the forum will not take judicial notice of the laws of a foreign country or of a sister State. Such laws are matters of fact to be pleaded and proved like any other fact; and until thus properly brought before the court, they may not be noticed.[1]

Where, however, a case must be governed by a foreign law, courts of the forum usually evidence great aversion to throwing out the entire cause merely for the reason that they have before them no law to administer. They will therefore, where counsel fail properly to plead and prove the foreign law, indulge in certain presumptions as to the status of that law. And in this way, the case may be decided, and failure of justice merely on account of the lack of any law to apply, be averted.

The courts of the different jurisdictions have not agreed on any one uniform presumption to be applied in every case. Each State has decided what shall be the rule in its own courts, and the number and variety of the presumptions is therefore almost as great as the possibilities of the situation permit.

A right of action so fundamental as to be almost universally

[1] Yang-Tsze Ins. Ass'n *v.* Furness (C. C. A.), 215 Fed. 859; O'Donnell *v.* Johnson, 36 R. I. 308, 90 Atl. 165; Grow *v.* Oregon Short Line R. Co. (Utah), 138 Pac. 398; Mountain Lake Land Co. *v.* Blair, 109 Va. 147, 63 S. E. 751; Savage *v.* O'Neil, 44 N. Y. 298. But the courts of a State will take judicial notice of acts of congress of a public nature. Davis *v.* McColl, 179 Mo. App. 198, 166 S. W. 1113; Western Union Tel. Co. *v.* White (Tex. Civ. App.), 162 S. W. 905. So also as to the terms of a treaty between the United States and a foreign nation. Schweitzer *v.* Hamburg, etc., Gesellschatt (App. Div.), 134 N. Y. Supp. 812. And the courts of a State will notice judicially the fact that the laws of a sister State or a foreign country are based upon the common or civil law. Wade *v.* Boone (Mo. App.), 168 S. W. 360; Barrielle *v.* Bettman, 199 Fed. 838.

recognized in all civilized nations, such as the right of action for breach of contract, battery of the person, conversion, etc., is presumed generally to exist, and need be neither pleaded nor proved.[2]

When, however, a right not so fundamental is up for decision before the courts, the several States have evolved varying rules of decision. And in this connection, a distinction should be made between rights based upon the common law and those based upon statute.

As to common-law rights, where the laws of a sister State are based upon the common-law system, it is generally presumed that the common law still prevails there.[3] Some courts indulge the additional presumption that the common law of the sister State is the same as the common law of the forum unaltered by statute.[4] Others presume that the common law of the sister State is the same as that of the forum, even as altered by statutes of the forum.[5] In the recent case of *Baker* v. *St. Louis, etc., R. Co.* (Mo.), 172 S. W. 1185, a similar result was reached on an entirely different principle by holding that the law of the forum would be applied in the absence of any showing of the foreign law.

In many cases the court broadly states that the law of the sister State will be presumed to be the same as the law of the forum;[6] and it is difficult to determine just which of the above rules the court had in mind.

Where, however, the laws of the sister State are based upon the civil law, or some system other than the common law, it has been held that there is no presumption that the common law exists in such State, or that its laws are the same as the common law of the forum.[7]

As to statutory rights, there are two general rules of presumption. The first is that there will be no presumption that the foreign

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[2] Parrott *v.* Mex. Cent. R. Co., 207 Mass. 184, 93 N. E. 590. But it is held that there is no such presumption in matters not involving fundamental principles of right and wrong the observance of which is necessary to the existence of human society. This is especially true where the forum is governed by the common law and the laws of the foreign state are based upon a different system of jurisprudence. Cuba R. Co. *v.* Crosby, 222 U. S. 473; The Miguel Di Larrinaga, 217 Fed. 678.

[3] Wade *v.* Boone, *supra;* Mutual Life Ins. Co. *v.* Devine, 180 Ill. App. 122; Mountain Lake Land Co. *v.* Blair, *supra.*

[4] Lemieux *v.* Boston & M. R. Co. (Mass.), 106 N. E. 992; Elswick *v.* Rainey, 157 Ky. 639, 163 S. W. 751; O'Donnell *v.* Johnson, *supra;* Southwork *v.* Morgan, 205 N. Y. 293, 98 N. E. 490; Mountain Lake Land Co. *v.* Blair, *supra;* Bethel *v.* Pawnee Co., 95 Neb. 203, 145 N. W. 363.

[5] Buchanan *v.* Hubbard, 119 Ind. 187, 21 N. E. 538.

[6] Secor *v.* Siver (Iowa), 146 N. W. 845; Ogg *v.* Ogg (Tex. Civ. App.), 165 S. W. 912; Cellulose Package Co. *v.* Calhoun, 166 Cal. 513, 137 Pac. 238; White *v,* Minneapolis, etc., R. Co., 147 Wis. 141, 133 N. W. 148; Pitt *v.* Little, 58 Wash. 355, 108 Pac. 941.

[7] Flato *v.* Mullhal, 72 Mo. 522. Nor is there any presumption that common-law rules exist in a foreign country where the laws are based on a general system of jurisprudence other than the common-law rules. Savage *v.* O'Niel, 44 N. Y. 298; Lucia Mining Co. *v.* Evans, 131 N. Y. Supp. 280.

statute law is the same as that of the forum.[8] This is based generally on the very logical and practical reasoning that it cannot be thought that the minds of the legislators of one State will take the same trend as those of the legislators of another; that therefore it may not reasonably be presumed that the same statutes will be passed in any two States. So under this rule the foreign statute law must be pleaded and proved; the court will neither notice it judicially, nor presume as to its character.

The second rule of presumption is that the foreign statute law will be presumed the same as that of the forum, and the latter will be applied in the absence of any contrary showing of foreign statutes by proper pleading and proof.[9]

Georgia seems to be alone in holding a very peculiar and probably unsound rule.[10] In the case cited, the court held it might not be presumed that the common-law rule as to fellow servants existed in South Carolina "if there was any way in which the court could have informed himself as to what the law of South Carolina really was, or if the court, as a matter of fact, knew the law of South Carolina upon the subjects involved." The court says further: "If the court below either knew the law or had any way of informing itself as to the law of South Carolina, and correctly decided the issues involved in this case according to that law, there is no error." Accordingly the South Carolina constitutional provisions were shown, and South Carolina cases construing them cited.

Such a rule as the above would seem to place an unusual and unnecessary burden upon the court; and its tendency would eventually be towards irregularity of rule and decision. Nor may it be considered as founded upon any sound rule of reason or policy.

The modern and growing tendency, especially in the newer States, seems to be to presume in all cases that the foreign law, whether common law or statutory, is the same as that of the forum. In discussing this rule, Mr. Minor says:[11] "The true basis of this presumption, as a rule of law (if it is to be considered as sound), is to be found in the unwillingness of the courts to deny relief to litigants coming before them, merely for want of a law to administer. Certainly the great weight of authority is in favor of the rule. Nor is it in most instances apt to work any material injustice, since a failure of both parties to present to the court any evidence of the proper foreign law may reasonably justify the court in presuming that neither party finds anything there which would place him in a position more advantageous than he occupies under the lex fori, or which would place his adversary in a less advantageous position. It is not unfair to presume, therefore, whatever the real differences may be between the 'proper law' and

[8] Lowett *v.* Wallace (Me.), 92 Atl. 321; Lemieux *v.* Boston, etc., R. Co., *supra;* Venner *v.* N. Y., etc., R. Co., 160 App. Div. 127, 145 N. Y. Supp. 725.

[9] Grow *v.* Oregon, etc., R. Co., *supra.*

[10] Southern R. Co. *v.* Diseker, 13 Ga. App. 799, 81 S. E. 269.

[11] Minor, Conflict of Laws, p. 533.

the lex fori, that for the purposes of the case in hand neither party can be injured by the presumption that the two laws are similar."

Certainly such reasoning is based upon the soundest principles of logic and policy. It places a just burden upon the proper persons. It rightfully denies them the protection of any law whose aid they are too indolent or too negligent to invoke; and yet grants them the privilege of its protection if they so desire.

CONSTITUTIONALITY OF STATE STATUTE AUTHORIZING SALE BY COURT OF A REMAINDER VESTED IN A PERSON SUI JURIS.—There are certain circumstances under which it is a well-settled rule that the Legislature has the constitutional power to authorize a change in the ownership of lands without the consent of the person who holds the title. But the title to real estate under our jurisprudence is considered as something almost sacred, and to be tampered with only in cases of private necessity or for the public good.

There are certain classes of persons who are unable to contract by reason of disability imposed by law. Infants, idiots and lunatics are absolutely powerless to convey their real property for themselves; hence it is essential that there be some person authorized to exercise this power for them.[1] If nobody had the power a large part of the land would always be tied up, consequently it is well settled that the State as *parens patriæ* may constitutionally authorize the sale or other disposition of the real estate within its borders belonging to persons under disabilities, in order to promote their interests and the interests of the State.[2]

It is now settled that the courts under legislative authority have the power to sell land owned by tenants in common, joint tenants, or co-parceners when necessary for partition even against the wishes of some of the parties,[3] and although there is conflict on the point the better rule seems to be that the legislature may authorize the sale of contingent interests in real property.[4] The New York court in *Brevoort* v. *Grace* gave utterance to the following strong dissent from the majority view: "It is further insisted that although the legislature may not have the power to authorize the sale of an estate in possession or a vested estate in expectancy of an adult without his consent, yet it can authorize the sale of a contingent estate in expectancy. I can see no reason for the distinction. An

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[1] Kneass' Appeal, 31 Pa. St. 87. The court said: "The State has a deep interest in the free alienation and rapid improvement of all real estate within her limits. The necessities of infants and lunatics often require that the power to sell should be exercised by some one."

[2] Munford *v.* Pearce, 70 Ala. 452; Davison *v.* Johonnot, 7 Metc. (Mass.) 388, 41 Am. Dec. 448.

[3] 1 MINOR, REAL PROPERTY, 1024.

[4] Linsley *v.* Hubbard, 44 Conn. 109, 26 Am. Rep. 431; Bass *v.* Roanoke Navigation & Water Power Co., 111 N. C. 439, 16 S. E. 402. *Contra,* Brevoort *v.* Grace, 53 N. Y. 245.